

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
LPTV, TV Translator, and FM Broadcast Station)	MB Docket No. 18-214
Reimbursement)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auction)	

**COMMENTS OF MICHAEL A. SLEEZER
D/B/A CMS BROADCASTING COMPANY**

Michael A. Sleezer d/b/a CMS Broadcasting Company (“Mr. Sleezer”),¹ respectfully submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”)² in the above-captioned proceeding with regards to the FCC’s proposed expansion of reimbursement opportunities for full-power and Class A television broadcast stations. Mr. Sleezer wishes to focus on the reimbursement of expenses incurred due to the forced relocation of fixed broadcast auxiliary service (“BAS”) stations – including television studio-transmitter links (“STLs”) – out of the 600 MHz band. Mr. Sleezer fully supports the Commission’s proposal in the *NPRM* to reimburse full-power and Class A television stations from the TV Broadcaster Relocation Fund (“Reimbursement Fund”) for the onerous STL relocation and replacement

¹ Mr. Sleezer is the licensee and permittee of four small broadcast stations located in upstate New York, including Class A television station WFNY-CD, Gloversville, New York (Facility ID No. 167948) (“WFNY-CD”). Mr. Sleezer is also the licensee of STL WPNJ942, which operates at 662-668 MHz, and has been designated for relocation by T-Mobile.

² See generally *LPTV, TV Translator, and FM Broadcast Station Reimbursement*, MB Docket No. 18-214, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, FCC 18-113 (rel. Aug. 3, 2018) (“*NPRM*”).

expenses resulting from the FCC’s repurposing of the 600 MHz band for the benefit of wireless providers – *not* the incumbent broadcast stations.

I. BACKGROUND

A. Incentive Auction R&O

In the 2014 *Incentive Auction R&O*, the Commission ordered all fixed BAS stations – including STLs – operating in the 600 MHz band to cease operations, and relocate out of the band.³ Furthermore, the FCC ordered that affected BAS stations must be relocated “no later than the end of the Post-Auction Transition Period,” or during the Post-Auction Transition Period “if a new 600 MHz wireless licensee intends to commence operating [on the BAS station’s channel] and there is a likelihood of harmful interference from the fixed BAS station.”⁴ The FCC, however, stated that broadcasters would *not* be reimbursed for the forced relocation of their stations because “[f]ixed BAS is a *secondary service*, and the Spectrum Act does *not* provide for reimbursement of any relocation costs through the [Reimbursement Fund].”⁵ Moreover, for the same reasons, the Commission determined that the costs associated with the replacement of BAS stations with different technologies, e.g., microwave equipment, would not be eligible for reimbursement for full-power and Class A television stations for the same reasons.⁶

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567, 6695, ¶ 297 (2014) (“*Incentive Auction R&O*”). See also *id.* at 6841-42, ¶¶ 673-76 (same).

⁴ *Id.* at 6695, ¶ 297.

⁵ *Id.* at 6695-96, ¶ 298 (emphasis added) (citations omitted). See also 47 C.F.R. § 1452(b)(4)(A) (specifying costs eligible for reimbursement); 47 C.F.R. § 74.602(h) (stating that TV STLs, TV relay stations, and TV translator relay stations may be authorized “on a secondary basis”).

⁶ See *NPRM* at 19, n.131 (citing *Incentive Auction R&O*, 29 FCC Rcd. at 6822, ¶ 623).

B. The House Committee Report and REA

On March 6, 2018, the U.S. House Committee on Energy and Commerce released a report (“House Committee Report”)⁷ proposing language for the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (“RAY BAUM’S Act”) – which was subsequently incorporated into the Consolidated Appropriations Act, 2018 (“CAA”).⁸ The CAA is referred to by the FCC in the *NPRM* as the Reimbursement Expansion Act (“REA”).⁹ In the House Committee Report, based on its analysis of Section 602 of the RAY BAUM’S Act,¹⁰ the House Energy and Commerce Committee instructed the FCC to consider through “rulemakings or other proceedings . . . whether stations may be eligible for reimbursement . . . for costs reasonably incurred to *move* or *reconfigure* [STLs] or to *replace* [STLs] that are no longer available because they previously operated in the new 600 MHz wireless band.”¹¹ When the REA was ultimately passed by Congress on March 23, 2018, however, the act did not include the Committee’s instruction to the FCC to provide for reimbursement of STL relocation costs incurred by full-power and Class A television stations as a result of the Incentive Auction.¹²

⁷ H.R. REP. NO. 115-587, pt., 1 at 33 (2018) (“House Committee Report”).

⁸ See Consolidated Appropriations Act, 2018 (“CAA”), Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)).

⁹ See *NPRM* at 1, n.1.

¹⁰ See CAA, Division E, Title V, § 511 (codified at 47 U.S.C. § 1452(k)). See also 47 C.F.R. § 1452(k)(1) (“[T]he Commission shall reimburse costs reasonably incurred by a television translator station or low power television station on or after January 1, 2017, in order for such station to relocation its television service from one channel to another channel or otherwise modify its facility as a result of the reorganization of broadcast spectrum . . .”).

¹¹ House Committee Report at 33 (emphasis added) (analysis of Section 602 of the RAY BAUM’S Act).

¹² See 47 U.S.C. § 1452(k).

II. DISCUSSION

In the *NPRM*, the FCC requested comment on whether: (1) “the REA would permit reimbursement [of full-power and Class A television stations] of [STL relocation] costs from the Reimbursement Fund;” (2) “the Commission could or should permit reimbursement of such expenses in light of findings in the *Incentive Auction R&O*,” and (3) “how to treat such costs incurred by non-repacked stations.”¹³ For the reasons set forth below, the Commission should permit reimbursement of full-power and Class A television stations for STL relocation and replacement expenses incurred as result of the Incentive Auction.

A. The REA Permits Reimbursement of STL Relocation and Replacement Costs

As evidenced by the House Energy and Commerce Committee’s report, the REA permits the FCC to direct the reimbursement of full-power and Class A television stations for their STL relocation and reimbursement expenses resulting from the Incentive Auction. Although the Commission is provided ample discretion in interpreting ambiguous provisions of the Communications Act of 1934, as amended (the “Act”),¹⁴ the FCC has relied upon congressional legislative history to formulate its own interpretations of the Act.¹⁵ Accordingly, the House

¹³ *NPRM* at 19-20, n.131.

¹⁴ See 47 U.S.C. § 151 *et seq.* See also generally *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

¹⁵ See, e.g., *Ondas de Vida, Inc.*, Forfeiture Order, File No. EB-FIELDWR-16-00020978, NAL/Acct. No. 201732900003, DA 18-805 at 3, n.23 (EB 2018) (“[T]he legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context.” (citing H.R. REP. NO. 97-765 (1982)); *Business Data Services in an Internet Protocol Environment, et al.*, Report and Order, 32 FCC Rcd. 3459, 3567-68, ¶ 269 (2017) (FCC’s interpretation of the term “telecommunications services” to “encompass only telecommunications provided on a common carrier . . . gives meaning to the ‘to the public’ criteria in the telecommunications service definition in a manner that accords with the relevant legislative history.” (emphasis added) (citation omitted)).

Committee Report provides a sufficient basis for the FCC to conclude that the REA permits reimbursement of full-power and Class A television stations for their STL relocation and replacement costs incurred as a result of the Incentive Auction.

The House Committee Report states that, pursuant to Section 602 of the RAY BAUM'S Act, the House Energy and Commerce Committee instructs the FCC to determine whether full-power and Class A television stations may be reimbursed for "costs reasonably incurred to *move*[,] *reconfigure*[,] or [] *replace*"¹⁶ STLs. The committee made this instruction to the FCC in light of the fact that the Spectrum Act did *not* explicitly provide for reimbursement for any relocation costs incurred by secondary services – such as STLs – from the Reimbursement Fund.¹⁷ Therefore, by deliberately making this instruction in the House Committee Report, it is evident that Congress intended to provide the FCC with such rulemaking authority through the clarification of ambiguous provisions of the Spectrum Act relating to Incentive Auction expense reimbursements. Accordingly, the REA empowers the FCC to take administrative action to permit reimbursement of full-power and Class A television stations for *both* STL relocation and replacement costs incurred as a result of the Incentive Auction.

B. The FCC Should Permit Reimbursement of STL Relocation and Replacement Costs

It is imperative that the Commission permit the reimbursement of full-power and Class A television stations for STL relocation and replacement costs incurred as a result of the Incentive Auction. *First*, reimbursement of STL relocation and replacement costs is necessary as a matter of fairness as full-power and Class A television stations are *not* the true benefactors of the Incentive Auction. Rather, it is the wireless providers that are reaping the primary benefits of the

¹⁶ House Committee Report at 33 (emphasis added).

¹⁷ *See supra* note 5.

auction by acquiring spectrum in the 600 MHz band as a result of the mandatory vacation of the band by incumbent broadcasters.¹⁸ This is especially true for broadcasters – such as Mr. Sleezer¹⁹ – whose spectrum usage rights were not purchased in the reverse auction.²⁰ Accordingly, any financial compensation for expenses related to the Incentive Auction for such broadcasters is limited to reimbursements made from the Reimbursement Fund.

Second, for many broadcasters, STL relocation and replacement are quite financially burdensome endeavors – costing in excess of tens of thousands of dollars.²¹ Without reimbursement of these expenses, many broadcasters would be unable to continue using their STLs following their removal from the 600 MHz band. These financial burdens are especially onerous for small Class A television broadcasters – such as Mr. Sleezer – who have limited financial resources to accommodate such involuntary operating expenses.

Finally, STLs are essential components of television broadcast service, which the FCC has stated are “critical part[s] of the broadcasting system by which emergency information and entertainment content is provided to the American public.”²² Accordingly, as a result of the

¹⁸ See *Incentive Auction R&O*, 29 FCC Rcd. at 6571, ¶¶ 4-5 (“While minimizing disruption to broadcast television service, we seek to rearrange the UHF spectrum . . . for new [mobile broadband] services . . .”).

¹⁹ In the reverse auction, Mr. Sleezer did not receive a bid for the spectrum held by his Class A television station, WFNY-CD. See *Incentive Auction Closing and Channel Reassignment Public Notice, et al.*, Public Notice, 32 FCC Rcd. 2786, Appx. A (2017).

²⁰ See *Incentive Auction R&O*, 29 FCC Rcd. at 6569-70, ¶ 1 (“Broadcasters will have the unique financial opportunity in the ‘reverse auction’ phase of the incentive auction to return some or all of their broadcast spectrum usage rights in exchange for incentive payments.” (citation omitted)).

²¹ See, e.g., Notice of Ex Parte of Mohave County, Arizona Board of Supervisors, MB Docket No. 18-214, GN Docket No. 12-268 at 2 (filed July 24, 2018) (“Mohave County Notice of Ex Parte”) (stating that the estimated cost of replacing microwave relay equipment as a result of the Incentive Auction is \$70,000).

²² *Improving Public Safety Communications in the 800 MHz Band, et al.*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969,

onerous STL relocation and replacement expenses, many full-power and Class A television station licensees would be unable to continue realizing the benefits of such services following the Incentive Auction. For these reasons, the FCC should permit reimbursement of full-power and Class A television stations for their STL relocation and replacement costs incurred as a result of the Incentive Auction.

C. The FCC Should Permit Reimbursement of STL Relocation and Replacement Costs for both Repacked and Non-Repacked Full-Power and Class A Television Stations

The FCC should permit *both* repacked and non-repacked full-power and Class A television stations to be reimbursed for their STL relocation and replacement expenses resulting from the Incentive Auction. Whether or not a STL's parent station has been repacked should not be a factor in permitting reimbursement for STL relocation and replacement expenses. In some instances – depending on the specific frequencies sought be acquired by T-Mobile and other wireless carriers – a broadcaster's STL may be removed from the 600 MHz band while its full-power or Class A television stations may *not* need to be repacked. Accordingly, as these broadcasters would still be incurring STL relocation and replacement expenses in either scenario – it is irrelevant for purposes of reimbursement as to whether the parent station has also been repacked.

CONCLUSION

For the foregoing reasons, the FCC should permit reimbursement of full-power and Class A television licensees for STL relocation and replacement expenses incurred as a result of the Incentive Auction. As evidenced by the House Energy and Commerce Committee's report,

15094-95, ¶ 250 (2004); *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Order, 15 FCC Rcd. 12315, 12326, ¶ 28 (2002) (same); Mohave County Notice of Ex Parte at 2 (same). *See also Amendment of Part 74, et al.*, Report and Order, 93 F.C.C.2d 570, 579-80, ¶ 24 (1983) (stating that the purpose of BAS is "to serve the program distribution needs of the television industry").

the REA directs the FCC to permit such reimbursement expenses, and it is in the public interest for the Commission to do so. Accordingly, the FCC should find that full-power and Class A television stations should be reimbursed for their STL relocation and replacement expenses from the Reimbursement Fund.

Respectfully submitted,

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Dated: September 18, 2018